

# VALIDITY OF SECTION 309 OF IPC

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## ABSTRACT

*Suicide is one of the most serious problems that plagues the current generation's students. To discourage people from attempting suicide, the attempt to commit suicide was criminalised. However, this move has been criticised thoroughly several times around the globe by being described as barbaric and anachronous. The question of the validity of Section 309 of the Indian Penal Code (attempt to commit suicide) has been challenged several times and has yielded results on both sides for example, in Maruti Shripti Dubal v. State of Maharashtra the Bombay High Court ruled that this section is unconstitutional, while the Andhra Pradesh high court in the case of Chenna Jagadeeswar v. State of Andhra Pradesh did not follow the reasoning given in the same judgement, many other cases took place until a final verdict was delivered by the Supreme Court in Smt. Gian Kaur v. State of Punjab, deeming the impugned section as constitutionally valid. This paper analyses some of these cases and the arguments used within.*

## RESEARCH METHODOLOGY

The research paper followed a doctrinal path of research where it aims to draw a conclusion by reviewing numerous literatures in the forms of e-books, online articles, journal articles, court cases, research papers, and legal journals were extensively made use of. The paper draws its conclusions on the basis of the literature reviewed and the material available to the researcher.

## REVIEW OF LITERATURE

1. In the publication '*Suicide: An Indian perspective*',<sup>1</sup> an in-depth analysis into the demographics and epidemiological factors of suicide in India has been presented along with a look into the outcomes of suicide prevention strategies prevalent in India. It also looks into legal status of an attempt to commit suicide and commentary on the same has been given. Leading causes of suicide have also been listed and analysed in the report.

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<sup>1</sup> Rajiv Radhakrishnan & Chittaranjan Andrade, *Suicide: an Indian Perspective*, 54 INDIAN J. PSYCHIATRY 304 (2012).

2. In the publication '*What Do Suicide Attempters Think About Legal Status Of Suicide In India?*',<sup>2</sup> a study was conducted in which recent attempters were interviewed and asked questions regarding their awareness about the legality of committing suicide. Here, the inclusion of 'attempt to commit suicide' in the Indian Penal Code was assumed to be a deterrent to dissuade people from engaging such acts. The finding was that the majority attempters were not aware about the legal status of suicide during the time of the attempt, and those that were aware of it did not approve of such a status and claimed it did not deter them from attempting suicide, but rather they wished to make sure their attempt was successful.
3. In the publication '*Suicide in India*',<sup>3</sup> the statistics of suicide in India are analysed with respect to the current legal scenario and an analysis is given on how suicide prevention strategies should include legal education of people that are susceptible of attempting, or past attempters of suicide.
4. In the publication '*Crime of Attempt to Commit Suicide*',<sup>4</sup> an in-depth analysis into Section 309 of the Indian Penal Code is given, including excerpts from some landmark cases related to the topic. It states the strongest arguments from each of the side and highlights the perspective of the survivors. This publication was made before the Mental Healthcare Act of 2017.
5. In the publication '*Criminalizing Suicide Attempts: Can it be a Deterrent?*',<sup>5</sup> the lacunae in Indian law with regard to suicide is examined, the effects and implications of criminalizing the attempt to suicide is analysed, and in the end the benefits of decriminalizing the attempt to suicide are discussed, such as lessening the burden of societal stigma on families in which a member commits or attempts to commit suicide.
6. In the publication '*The Legal Status of Suicide: A Global Review*',<sup>6</sup> criminal codes from 192 countries were looked into, In 25 nations, committing suicide is currently illegal and an additional 20 countries follow Islamic or Sharia law where attempters may be punished

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<sup>2</sup> Shivanand Kattimani et al., *What do suicide attempters think about legal status of suicide in India*, 57 INDIAN JOURNAL OF PSYCHIATRY 103 (2015)

<sup>3</sup> D. Sumathi & R. Dhakshina Murthy, *Suicide in India*, 7 ACADEMICIA: AN INTERNATIONAL MULTIDISCIPLINARY RESEARCH JOURNAL 95–104 (2017)

<sup>4</sup> Neeraj Chhabra, *CRIME OF ATTEMPT TO COMMIT SUICIDE*, Legal Service India (2013).

<sup>5</sup> K. S. Latha & N. Geetha, *Criminalizing Suicide Attempts: Can it be a deterrent?*, 44 MEDICINE, SCIENCE AND THE LAW 343–347 (2004)

<sup>6</sup> Brian Mishara & David Weisstub, *The legal status of suicide: A global review*, 44 INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY (2015)

with jail sentences. Majority of countries have laws making it illegal to abet, aid, or encourage suicide, but the nature and punishment of the actions that are illegal varies. It discusses the roots of laws making suicide, aiding, and encouraging suicide illegal and examine prospects for future changes

## INTRODUCTION

The Black's Law Dictionary defines suicide as:

*'Self-destruction; the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties.'*<sup>7</sup>

The perception of suicide and mental health in the Indian society has always been considered a taboo and as an unnecessary topic for discourse and discussion. As the Western world evolves and becomes more accepting of issues like depression and anxiety, India still lags behind. Until 2017, an attempt to commit suicide was punishable under Section 309 of the Indian Penal Code ("IPC").<sup>8</sup> This Section reads as follows: *"Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both."*

Many debates and discussions were held to discuss the validity of this Section. While some parties argued that the right to life enshrined under Article 21 of the Indian Constitution also gave citizens the right to die,<sup>9</sup> others argued that the act of committing suicide was void under the same Article as suicide was not termination of life by due process of law, and that the right to life does not include the right to die.<sup>10</sup>

The Mental Healthcare Act of 2017 ("MHA") repeals Section 309 of the IPC through Section 115 of the Act. Section 115 (1) reads as follows: *"Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code"*. This Section implies that post the enactment of the MHA, the act of attempting to commit suicide will not be deemed a criminal, however the individual who

<sup>7</sup> *Suicide* in BLACK'S LAW DICTIONARY

<sup>8</sup> INDIAN PENAL CODE § 309 (1860)

<sup>9</sup> Maruti Shripti Dubal v. State of Maharashtra (1987) 1 BomCR 499

<sup>10</sup>Chenna Jagdeeswar and another vs State of Andhra Pradesh (1987) Indlaw AP 7

commits such an act will be presumed to be suffering from mental despair or stress, unless this is proven otherwise. This effectively maintains the criminal status of an attempt to commit suicide, but prevents the individual from being tried under the IPC. The reason the MHA prevails over the IPC here is because of the Doctrine of Harmonious Construction, this was spoken about in *Maya Mathew vs State of Kerala and Ors.*<sup>11</sup> Here, the supreme court said: *“When two provisions of law - one being a general law and the other being special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.”* In the case of Section 115 (1) of the MHA, the intention of law maker is clear that the MHA take precedence of the existing Section 309 of IPC.

## SUICIDE

The word suicide is derived from the Latin word ‘*suicidium*’ which is ‘the act of taking one's own life’. The existence and mentions of suicide in historical literature such as Greek, Latin, and Egyptian texts represent that it is a problem that stretches through millennia. Suicide is also mentioned in Hindu religious texts and in certain contexts, it was considered as an honourable and ‘ultimate’ sacrifice (such as Sati). Suicide is mentioned in texts such as the Ramayana and the Mahabharata. Thus, it is not wrong to assume that the problem of suicide has been plaguing Indian society for a long time. According to the National Crime Records Bureau's Report of 2018, around 1,34,516 deaths took place due to suicide in 2018 alone.<sup>12</sup>

## SUICIDE UNDER THE INDIAN LAW

Under Section 309 of the IPC, an attempt to commit suicide is a punishable offence. The Section reads as follows:

*“Whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.”*

Although ‘Suicide’ is not defined anywhere in the Indian Penal Code, in the case *P.Rathinam vs Union Of India*,<sup>13</sup> suicide was defined as ‘*an act or instance of taking one's own life*

<sup>11</sup> *Maya Mathew vs State of Kerala and Ors.*, (2010) 3 SCR 16

<sup>12</sup> NATIONAL CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, ACCIDENTAL DEATHS AND SUICIDES IN INDIA 2018 (2018)

<sup>13</sup> *P.Rathinam vs Union Of India*, (1994) 3 SCC 394

*voluntarily and intentionally; the deliberate and intentional destruction of his own life by a person of years of discretion and of sound mind; one that commits or attempts his self-murder*’.

Here, the author would like to draw attention to the words ‘voluntarily’, ‘intentionally’, and ‘of sound mind.’ Thus, it is important to note that intention plays a large part in the matter of suicide. It can be noted that under this Section, successful completion of the act of suicide avails no punishment, whereas a failed attempt to do so comes with a penalty. Considering the fact that the people that attempt to take their own lives must be under some mental strain or pressure that drove them to take such a step, punishing them for not being able to do so successfully seems like a harsh and cruel way to react to such an act.

Several arguments have been raised questioning the constitutional validity of Section 309. One perspective that many take on the legality is that a person attempting such an act is need of emotional, mental, or financial support among many other possible reasons, while the other perspective is that the punishment for attempting to commit suicide acts as a deterrent to others who may attempt to do so in the future. However, whether the punishment’s deterrence function is fulfilled or not still remains a mystery as there is no evidence available for or against the same.<sup>14</sup> Some argue that suicide becomes an ‘easier’ way out for those that are accused of crimes and thus, attempting to commit suicide becomes a way for him to escape punishment.<sup>15</sup> Further, authors argue that criminalising the commission of suicide makes it viable for the court to compel and individual to seek formal help in order to deal with their mental and emotional illness.<sup>16</sup>

After the enactment of the MHA, an attempt to commit suicide has been decriminalized under Section 115(a) which reads:

*‘Notwithstanding anything contained in Section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code’*

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<sup>14</sup> Shivanand Kattimani et al., *What Do Suicide Attempters Think About Legal Status of Suicide in India?*, 57 INDIAN J. PSYCHIATRY 103 (2015).

<sup>15</sup> *Supra* note 4, at 3

<sup>16</sup> IBA - ATTEMPTED SUICIDE: TRAGEDY OR CRIME? A SINGAPORE CASE STUDY, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=EDD42B58-F007-4BA8-AB12-A0B5D618C9F0> (last visited Dec 15, 2020)

Section 115(b) reads that any person that attempts to commit suicide must be given care, treatment and rehabilitation by appropriate authorities that are concerned in the matter.

## IS SECTION 309 CONSTITUTIONALLY VALID?

This question has been heavily debated many times in various cases, let us look at some and analyse the arguments from both the sides.

### *Maruti Shripati Dubal vs State of Maharashtra (1987) 1 BomCR 499*<sup>17</sup>

1. In this case, the Plaintiff was a mentally unstable police officer who tried to commit suicide by setting himself on fire in front of a municipal building. He was then formally arrested under Section 309 of the IPC and subsequently let out on bail. The Plaintiff appealed under Article 227 and challenged constitutional validity of Section 309. The Plaintiff's counsel argued that Section 309 violates Articles 14, 19 and 21 of the Indian Constitution, and punishing an individual for an act like attempting to commit suicide is barbaric and cruel in nature. While counters were present for all the contentions raised by the Plaintiff's side, the court ultimately ruled in the Plaintiff's favour.

2. The judgement says that Article 21 of the Constitution reads:

*No person shall be deprived of his life or personal liberty except according to procedure established by law.* Here, procedure established by law means just, fair, and reasonable procedure, and not just any procedure.<sup>18</sup> Under Article 21 of the Indian Constitution, all citizens have the right to life and liberty and thus to live their life with dignity. Therefore, Article 21 gives an individual to control his life and live it according to his own free will. However, it does not specify anything regarding the right of taking one's own life. The fundamental rights are not mutually exclusive of each other and must be read together, this was laid down in *R.C Cooper Vs Union of India*<sup>19</sup>. What is therefore true of one fundamental right, must be true of all other fundamental rights, thus all fundamental rights have positive and negative aspects, for illustration:

- The right to freedom of speech includes the right to stay silent

<sup>17</sup> *Supra* note 9, at 4

<sup>18</sup> *Maneka Gandhi vs Union of India*, (1978) 2 SCR 621

<sup>19</sup> *R.C. Cooper vs. Union of India*, (1970) SCR 530

- The right to do business also includes freedom not to do business and close down existing business<sup>20</sup>

Logically, following this pattern, the right to life (which also includes the right to live with dignity) also includes the right not to live, or right to not be forced to live, or simply – the right to die.

3. The right to die is not something new. It has been present in many religious and historic texts. Suicide was allowed and even celebrated on religious grounds in Hinduism and Jainism. The judgement also argues that if damage to one's own health or property does not constitute any offence, then why would the sacrifice of one's own body be considered a crime.
4. Finally, those who attempt to commit suicide due to some mental illness require attention and care, and not punishments that would worsen their mental health. Those who attempt to commit suicide due to some acute physical ailments, old age, etc. require medical attention and belong in nursing homes – not prisons.

On the basis of the above arguments, the court declared that Section 309 of the Indian Penal Code is unconstitutional and must be struck down.<sup>21</sup> This judgement was further reiterated and used as precedent in the case *P.Rathinam vs Union Of India (Supreme Court<sup>22</sup>)*

***Smt. Gian Kaur vs State of Punjab (1996) 2 SCC 648<sup>23</sup>***

1. In this case, the appellants Gian Kaur and her husband had been convicted under Section 306 of the Indian Penal Code (Abetment of Suicide)<sup>24</sup> and sentenced to a prison term for abetting the commission of suicide by Kulwant Kaur, the daughter-in-law of the accused.

This conviction was criticised on the grounds that Section 306 is unconstitutional. This inference was drawn from a judgement which stated that Section 309 of the IPC was unconstitutional as it was violative of Article 21 of the Constitution, it was stated that

<sup>20</sup> Excel Wear Etc vs Union of India & Ors, (1979) 1 SCR 1009

<sup>21</sup> *Supra* note 17, at 7

<sup>22</sup> *Supra* note 13, at 5

<sup>23</sup> *Smt. Gian Kaur vs The State of Punjab*, (1996) 2 SCC 648.

<sup>24</sup> ABETMENT OF SUICIDE

the right to die was a fundamental right of all individuals.<sup>25</sup> Thus, by abetting suicide, one was merely helping another in enforcing their fundamental right. The Court said it required a re-look and re-consideration of the previous judgement, and thus, the matter of Constitutionality of Section 309 was raised.

2. Several arguments challenged the judgement given in *P.Rathinam Vs Union of India*:
  - Section 309 does not violate Article 21 as the Article stands for protection of life and liberty, and under no circumstances could ‘protection’ be extended to ‘extinction’
  - Section 309 does not violate Article 14 as the sentence which is to be given under Section 309 is at the discretion of the Court, which are reasonable enough to be compassionate towards the victim’s conditions and set the punishment accordingly.
  - Section 306 is independent of Section 309 and does not violate either of the Articles that Section 309 was claimed to be violative of, and hence, it is constitutional even if Section 309 is not.
3. *Chenna Jagdeeswar and another vs State of Andhra Pradesh*<sup>26</sup> is another decision that supported the validity of Section 309 by rejecting the notion of Article 21 including the right to die, it also used the same argument to disqualify Article 14 as a valid point against Section 309’s validity.
4. The analogy made by the court in *P.Rathinam vs Union of India*<sup>27</sup> of how the Right to freedom of speech also includes the right to stay silent, and thus, right to live with dignity also includes the right to die, has been said to be ‘misplaced’. It has been argued that the negative aspect of the right to live would only be the extinction of the positive aspect, and not the suspension of it.
5. Ultimately the Court decided that the interpretation of Article 21 could not be validated, and the only reason for which 309 was held to be violative could not withstand legal scrutiny, and hence Section 309 is constitutionally valid.
6. Thus, this judgement effectively overruled the previous judgement. However, the Judges from this Bench did remark that the practice of punishing an individual for attempting to suicide was a barbaric and anachronous practice that should be discontinued. Constitutional validity does not indicate moral soundness.

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<sup>25</sup> *Supra* note 22, at 8

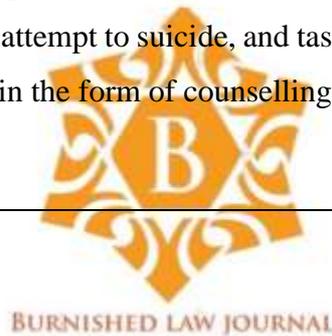
<sup>26</sup> *Supra* note 10, at 4

<sup>27</sup> *Supra* note 13, at 5

## CONCLUSION

After reviewing the arguments and cases mentioned in this paper it is clear that Section 309 is constitutionally valid. The arguments raised against this under Article 21 and Article 14 were quashed. Right to life does not include right to death, and hence, it is not a citizen's fundamental right to die. Further, the discretion of the court comes into play to ensure that the sentences issued under Section 309 are not arbitrary and take account of the victim's status, motives and purposes of attempting to commit suicide.

The topic of suicide however is not an issue that can be viewed merely from a legal perspective, it needs to be viewed from social and cultural perspectives as well. It is important to note that constitutional validity cannot be equated to moral soundness. Several judges and courts<sup>28</sup> have criticised the inclusion of Section 309 in the Indian Penal Code, including the Law Commission of India in its 42<sup>nd</sup>.<sup>29</sup> and 210<sup>th</sup> Reports<sup>30</sup>. The Mental Healthcare Act of 2017 has accounted for this and has decriminalized the attempt to suicide, and tasks the government with providing care for those that attempt suicide in the form of counselling, rehabilitation, etc.



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<sup>28</sup> *Supra* note 13, at 5

<sup>29</sup> LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE 244 (1971)

<sup>30</sup> LAW COMMISSION OF INDIA, HUMANIZATION AND DECRIMINALIZATION OF ATTEMPT TO SUICIDE (2008)